IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9104 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JADEJA SHIVUBHA KHIMBHA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9104 of 2002

MR NV ANJARIA for Petitioner No. 1

MR MK DAGLI, AGP for Respondent No. 1-2

MR HS MUNSHAW for Respondent No. 3-5

RULE NOT RECD BACK for Respondent No. 6-7

DS AFF.NOT FILED (R) for Respondent No. 8

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/10/2002

ORAL JUDGEMENT

#. This petition is filed by the then Sarpanch of Vijpasar Gram Panchayat, which is dissolved by the order of the Development Commissioner, Gujarat State, Gandhinagar dated 29.7.2002. The impugned order of the Development Commissioner, is passed under section 253 of the Gujarat Panchayats Act, 1993, which is at page 54 Annexure-K in the compilation. By the impugned order, the Development Commissioner has passed the order, dissolving the said panchayat for not passing the budget within the stipulated time, i.e. by 31st March of the current year. Vijpasar Gram Panchayat was constituted in November, 1997 and the first meeting of the panchayat was held in January, 1998. Under section 116 of the Act, the Panchayat is required to pass the annual budget latest by 31st March every year, and, accordingly for the purpose of passing the budget estimate for the year 2002-2003, a meeting was convened on 26.3.2002. The agenda regarding the said meeting was circulated on 18.3.2002.

#. It is the say of the petitioner that, the budget was passed in the aforesaid meeting, which was held on 26.3.2002 and that, the resolution to that effect was also passed approving the budget estimate, which is at Annexure-A in the compilation. Thereafter, minute book was handed over to the Talati-cum-mantri, and, accordingly, custody of the proceedings were handed over to the Talati-cum-mantri for recording the same. As per the averments made in the petition, even though, initially, in the minute book, the Talati had already written that, "budget is passed", subsequently, on the same night, i.e. on 26.3.2002, at the instance of few villagers as well as at the instance of few members of the panchayat, which include the Deputy Sarpanch, the Talati-cum-mantri made certain erasure and instead of the words "budget is passed", he substituted the words by overwriting "budget is not passed". Ultimately, on the basis of the aforesaid aspect regarding nonpassing the budget, the show cause notice was issued to the Panchayat on 4.5.2002 to show cause as to why the Panchayat should not be dissolved, as, it has failed to pass the budget by 31st March, 2002. Ultimately, the Development Commissioner by his order dated 29.7.2002 came to the conclusion that the Panchayat has not passed the budget by 31.3.2002 and that by Resolution No.34, the budget is not approved by the majority, and, accordingly, considering the report of the Executive Committee of the District Panchayat, the Development Commissioner passed the order of dissolving the panchayat.

#. At the time of hearing of this petition, the

concerned Talati-cum-mantri - respondent No.8 was present before this Court, and, he submitted that, even though, initially, in the minutes book, he has written that "budget is passed", but subsequently, at the instance of some members, he corrected the same to the effect that, "budget is not passed". Considering the aforesaid say of the Talati-cum-mantri, it is not possible for this Court to give any weightage to the say of the Talati-cum-mantri - respondent No.8, who has tried to change the noting in the minutes book.

#. Mr.Anjaria, learned advocate, for the petitioner, submitted that the budget was passed on the aforestated date, but subsequently, at the instance of some members, the Talati-cum-mantri changed the noting, which was correctly recorded earlier. He submitted that, even in the earlier meeting dated 29.12.2001, the budget proposal was sanctioned by all the members, and, therefore, it cannot be said that the panchayat has not passed the budget by 31st March.

#. Mr.Munshaw, who is appearing for the District Development Officer and the Taluka Development Officer, supported the order of the Development Commissioner.

#. It seems that, there are serious disputed questions of fact, which are involved in this petition. At this stage, it is not possible for this Court to arrive at the definite conclusion, whether the budget was really passed in the aforesaid meeting or not. The Development Commissioner has taken the view that the provision of section 116(3) of the Act is mandatory. The Development Commissioner has not considered the merits of the matter by considering the facts and circumstances of the case in detail. Since this Court has taken the view that the said provision is not mandatory, but directory, in my view, the matter is required to be sent back to the Development Commissioner for passing order on merits.

#. It is clarified that, this Court has not expressed any opinion on merits, whether the budget was, in fact, passed in the aforestated meeting or not and it is for the Development Commissioner to decide the issue by considering the material on record. For that purpose, if the Development Commissioner wants to ascertain the say of the concerned members of the panchayat, it will be open for him to call for the information from them. In short, this Court has not expressed any opinion on the merits of the issue, Since the Development Commissioner has come to the conclusion that the provisions are mandatory and not directory, accordingly, the order the

Development Commissioner is set aside. The matter is sent back to the Development Commissioner for fresh consideration. Since the order is set aside, the panchayat will be entitled to function. However, the Administrator, who is in charge of the affairs of the panchayat, may take appropriate action for passing the budget immediately, and, for that purpose, the Administrator will be entitled to retain the charge of the panchayat with him, and, thereafter, the same may be handed over to the elected body. The Development Commissioner may, thereafter, finalise the matter expeditiously and preferably by 30.10.2002. It is clarified that, this court has not adjudicated any points on merits, and, all the contentions are kept open including, whether solitary incident of nonpassing th budget can be a ground for dissolving the panchayat, and, it is for the Development Commissioner to decide all these questions.

#. With the aforesaid observations, this petition is allowed. The matter is remanded to the Development Commissioner for fresh decision. Rule is made absolute to the aforesaid extent with no order as to costs. The petitioner can take direct service of the writ of this order.

(P.B.Majmudar,J)
(pathan)